BRIEF IN SUPPORT OF PETITION.

I. The Public Utility Holding Company Act in Section 24 clearly grants the petitioners, as persons aggrieved, a right of review in the United States Circuit Court of Appeals from the orders of the Securities and Exchange Commission.

(a) Section 24 grants a complete right of review.

Section 24 states in explicit language the clear purpose of Congress to grant to any person aggrieved by an order of the Commission the absolute right of review in the United States Circuit Court of Appeals "wherein such person resides or has his principal place of business."

This section is very carefully drawn and specifies in clear detail:

(1) When the petition for review must be filed and the manner of its filing;

(2) The method of service of such petition;

(3) The duty of the Commission to certify and file a transcript of the record;

(4) The exclusive jurisdiction of the Circuit Court of Appeals to affirm, modify, or set aside such order, in whole or in part;

(5) The requirement that objections in the reviewing Court must have first been presented to the Commission unless there were reasonable grounds for failure to do so.

(6) Findings of the Commission as to the facts, if supported by substantial evidence, are made conclusive;

(7) Provision is made, upon proper showing, for an order by the Court to take additional evidence before the Commission;

(8) Provision is made for modification by the Commission of its original order on the basis of new or modified findings;

(9) The order of the reviewing Court is made final, subject to review by the Supreme Court upon certiorari or certification as provided in Sections 239 and 240 of the Judicial Code.

(10) Section 24 (b) relates to a stay of proceedings pending a review at the discretion of the Court.

These provisions of Section 24 set forth a comprehensive, coherent, expeditious and flexible system of review of all orders of the Commission. It is respectfully submitted that this jurisdiction, so plainly given by the Act, cannot be denied.

(b) Section 24 is generally applicable.

The entire contents of Section 24 pertains only to the procedure for review, thus it is obvious that this section is intended to establish the general procedure for reviewing all orders of the Commission, irrespective of the particular section under which some particular order might issue. The section contains no exception to its general provisions.

The general applicability of this section has recently been passed upon by the Supreme Court in the matters of American Power and Light Company v. Securities & Exchange Commission, and Securities & Exchange Commission v. Okin, 65 S. Ct. 1254. Mr. Justice Roberts in beginning his opinion expressed the intent to generally decide the question of jurisdiction in reviews of orders of the Securities & Exchange Commission under the Holding Company Act. He stated (page 1255):

> "We granted certiorari in these cases because of an apparent conflict in the decisions below concerning the application of Sec. 24 (a) of the Public Utility Holding Company Act, which provides that 'any per-

son or party aggrieved by an order issued by the Commission' under the Act may obtain a review of the order by the Circuit Court of Appeals of the circuit of his residence or principal place of business. The difference of view is as to the scope of the phrase 'person or party aggrieved.' "

As stated in that opinion, the right of review has always been accorded (page 1257):

"While the matter was not specifically moted, it would seem that, until the instant cases, both the Commission and the Courts have been of the view that persons situated as are the stockholders in these cases were given the statutory right to apply for review of a Commission order. In Circuit Court of Appeals, and in this court, stockholders have been heard upon the merits of orders made against corporations by the Securities and Exchange Commission." 7

"7. Lawless v. Securities & Exchange Commission, 1 Cir., 105 F. 2d 574; Todd v. Securities and Exchange Commission, 6 Cir., 137 F. 2d 475; cf. Northwestern Electric Co. v. Federal Power Commission, 321 U. S. 119, 64 S. Ct. 451, 88 L. Ed. 596."

Even the dissenting opinion expressed the opinion that where the rights of stockholders, as such, are involved the right of review is clear (page 1259):

"The Commission's order does not deal with the rights of stockholders as such, in which case a stockholder clearly could appeal from the order. Securities and Exchange Commission v. Chenery Corp., 318 U. S. 80, 63 S. Ct. 454, 87 L. Ed. 626; Lawless v. Securities and Exchange Commission, 1 Cir., 105 F. 2d 574; New York Trust Company v. Securities and Exchange Commission, 2 Cir., 131 F. 2d 274; City National Bank & Trust Co. v. Securities and Exchange Commission, 7 Cir., 134 F. 2d 65. See also Otis & Co. v. Securities and Exchange Commission, 323 U. S. 624, 65 S. Ct. 483."

While the matter under consideration in the above case was, as there stated, whether or not a stockholder is a person aggrieved, the present case similarly is an attempt by the Securities and Exchange Commission to circumvent the stockholder's right to a review of its orders intended by Congress and expressed by the clear and natural meaning of the language of the same statute. The present case differs from the above case only that the "devise" for circumventing the statute is a different contention. Here the contention of the Commission is that, since the plan for recapitalization was filed under subsection 11 (e), the right of the stockholder to a right of review in the Circuit Court of Appeals was thereby eliminated.

(c) Review under Section 24 is the accepted procedure.

Among the cases referred to in the above case, as authority for the stockholder's right of review, there are at least four under which the plan in question had been filed under subsection 11 (e), namely, Securities and Exchange Commission v. Chenery Corp., 318 U. S. 80, 63 S. Ct. 454; New York Trust Company v. Securities and Exchange Commission (2 Cir.), 131 F. 2d 274; City National Bank & Trust Co. v. Securities and Exchange Commission (7 Cir.), 134 F. 2d 65; and Otis & Company v. Securities and Exchange Commission, 323 U. S. 624, 65 S. Ct. 483.

Also cited by the Supreme Court in that case, as authority for the stockholder's right of review in the Circuit Court of Appeals (note 8, page 1257) is the case of L. J. Maquis & Co. v. Securities and Exchange Commission (3 Cir.), 134 F. 2d 822, in which case the Circuit Court of Appeals, Third Circuit, to which this writ of certiorari is sought, itself reviewed a plan filed under subsection 11 (e) at the instance of the Commission. The Commission filed the transcript in the Third Circuit, rather than in proceedings pending in the Second Circuit, in order that it might select a convenient forum.

II. The orders sought to be reviewed are essentially under Section 11 (b) of the Act which specifically requires a review under Section 24.

(a) The proceedings were consolidated.

The orders sought to be reviewed were issued as a result of proceedings under Section 11 (b), both under Section 11 (b) (1), treating with integration, but more particularly with Section 11 (b) (2), dealing with simplification of the corporate structure which necessitates reorganization; while the plan for complying with Section 11 (b) was filed by the Company under subsection 11 (e), since it is the only section under which such a plan could have been filed.

The notice of the proceedings contained a specific provision consolidating the proceedings under 11 (b) (1), 11 (b) (2) and 11 (e).[1] This question also arose at the hearings and counsel for the Commission specifically pointed out that the proceedings under all the sections were consolidated (R. 65).

The Circuit Court, however, treats the orders as though they were issued only under subsection 11 (e), but both the order of June 30, 1945, and July 18, 1945, were issued under the caption of all three file numbers relating to the files of the proceedings under 11 (b) (1); 11 (b) (2); and 11 (e). Likewise the order itself makes references to numerous sections of the Act, including 11 (b) (1) and 11 (b) (2).

(b) Subsection 11 (e) is dependent upon Subsection 11 (b).

The contention of the Commission, to the effect that the orders were issued only under subsection 11 (e), does not support a denial of a review, since subsection 11 (e) is

1. Notice of Filing and Notice of and Order for Hearing on Plan Filed Pursuant to Section 11 (e) of the Act, and Order of Consolidation, May 8th, 1943, read in part as follows:

"It Is Ordered that the proceedings with respect to said Plan filed pursuant to Section 11 (e) of the Act and the pending consolidated proceedings under Sections 11 (b) (1) and 11 (b) (2) of the Act be, and they hereby are, consolidated, and that the scope of said consolidated proceedings shall include the issues hereinafter set forth."

completely dependent upon subsection 11 (b) according to its own terms. Plans under subsection 11 (e) must be "for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b)." And the Commission cannot approve such plan unless it "shall find such plan * * * necessary to effectuate the provisions of subsection (b)."

A reading of subsection 11 (e) in its entirety (R. 53-54) shows it is but one of a number of methods of carrying out the effective portions of Section 11, which are subsections 11 (b) (1) and (b) (2). Without reference to subsection 11 (b), there is no authority for that which is sought to be done by the plan, and no standard for the Commission's orders, which must find the plan "necessary to effectuate the provisions of subsection (b)."

(c) Subsection 11 (b) requires review under Section 24.

Subsection 11 (b) provides, inter alia, "Any order made under this subsection shall be subject to judicial review as provided in Section 24." The strong language "shall be subject" makes a review under Section 24 a condition precedent before orders pertaining to that section can become effective. How then can it be contended that a plan filed under subsection 11 (e) "effectuates the provisions of subsection b" if it fails to permit a review as provided for by that subsection?

III. The Circuit Court in dismissing the petition for review improperly construed Subsection 11 (e) of the Act.

(a) Subsection 11 (e) is consistent with Section 24.

In dismissing the petition for review the Circuit Court in its opinion stated the primary question involved as "whether this Court is the proper forum to test the Commission's orders pursuant to section 24 (a) of the Act, as petitioners allege, or whether the District Court is the proper forum pursuant to Section 11 (e) as the Commission alleges" (R. 67-68). By stating the question in that man-

ner the Circuit Court assumes an inconsistency between Section 24 and subsection 11 (e). Later the Court used the term "inconsistency" (R. 68).

There is, however, no inconsistency between these provisions; they merely relate to different things. Section 24 grants the general right of a person aggrieved to a review in the Circuit Court of any order under any section of the Act, without exception. If a review is sought, it must be sought within sixty days of the order. If, after sixty days have elapsed and no review is sought, a review of the order can not be had and the order is then ready for enforcement. Subsection 11 (e) provides the method for enforcement of the order, namely, in a District Court. In other words Section 24 is similar to all provisions, in the law generally, for appeal or review; while subsection 11 (e) is the method of procedure ordinarily followed for enforcement, when the time for review has elapsed or the review has been had and the order affirmed.

(b) The procedure in bankruptcy does not apply.

The Circuit Court indicated the procedure under the Public Utility Holding Company Act should be exactly the same as that for the reorganization of railroads under Section 77 of the Bankruptcy Act, 11 U. S. C. A. Sec. 205 (R. 69). In so construing the Act, the Court below overlooked the fundamental differences existing in the two situations. First, the statutes are entirely separate statutes. Since the intent under Section 24 is clear, there is no reason for placing any reliance on chance remarks which may have been expressed in the legislative history. Second: The railroads were insolvent and for this reason the proceedings initiated in the District Court. Here, however, Commonwealth is not insolvent, neither in bankruptcy, nor in default, and the proceedings were initiated in the Securities and Exchange Commission. Third: The orders of the Commission cannot be sustained as an exercise of the bankruptcy powers of Congress, Burco, Inc. v. Whitworth, 81 F.

2d 721, certiorari denied, Burco, Inc. v. Whitworth, 297 U. S. 724.

(c) The cases cited by the Circuit Court do not apply.

The opinion of the Court by Goodrich J. rested squarely upon the judgment of the Second Circuit in Okin v. Securities and Exchange Commission, 145 F. 2d 206, which judgment was vacated by this Court, 65 S. Ct. 1569. It should be noted that in that Okin case proceedings for enforcement had been commenced in the District Court before the petition for review was filed in the Circuit Court. In the present case, there have been no proceedings in the District Court, and at the time the petition for review was filed there were no proceedings elsewhere. The Circuit Court, Second Circuit, in the Okin case began its opinion by pointing out that proceedings had already begun in the District Court. We believe it was improper for the Commission to start enforcement proceedings, in the Okin case, in the District Court before the 60 days had elapsed within which to file a petition for review, but this contention is not essential to our position, since our petition for review was sought before any proceedings were brought elsewhere.

The Circuit Court in following the judgment of the Second Circuit avoided reference to the fact that this Court had vacated the judgment upon which it relied. We believe that in vacating the judgment of the Circuit Court, while remanding the matter to the Circuit Court for determination of a question not relevant to our question, this Court intended to convey to the Court below its disapproval of that judgment, particularly since this Court had just handed down its decision in the matter of Securities and Exchange Commission v. Okin, 65 S. Ct. 1254, in which it had broadly upheld the right of a stockholder to a review.

The concurring opinion of Biggs, J. relied largely upon the attempted parallel with the Bankruptcy Act; and the cases which were therein cited, namely, Gilbert v. Securities and Exchange Commission, 146 F. 2d 513, and Chicago &

N. W. Ry. Co. v. U. S., 52 F. Supp. 65. Both were bankruptcy matters in which the jurisdiction of the District Court had originally attached In the Gilbert case the matter of a plan of reorganization was merely referred to the Securities and Exchange Commission with the distinct provision that the matter be returned to the District Court as the Court of original jurisdiction.

(d) The construction adopted by the Circuit Court violates the rules for construction of statutes.

The interpretation of Section 24 and subsection 11 (e) placed upon them by the Court below, violates every fundamental rule for the construction of statutes.

(1) *Where the meaning is clear, a statute is not open to construction.* The meaning of Section 24 is clear. Certainly there can be no possible ambiguity as to which court is meant by the words "circuit court of appeals of the United States". Chief Justice Marshall stated, in the United States v. Fisher et al., 2 Cranch 358, on page 386, the fundamental principle for construction of statutes: "Where the intent is plain, nothing is left to construction".

The court should not have leaned toward a construction that there was an inconsistency between Section 24 and subsection 11 (e) when there was a clear, natural and consistent interpretation available as hereinbefore set forth.

(2) *The Courts will not imply an exception to a general provision in a statute.* The construction adopted by the court below requires that subsection 11 (e) be construed as an exception to the general provisions of Section 24. It is a fundamental principle of construction that where a statute uses general language, which is applicable to the subject matter, the Court will not construe an intent to exclude, since this would be an act of legislation on the part of the judiciary. The following excerpt from 50 Amer. Jurisprudence, page 452, par. 432, expresses the rule:

"Sec. 432. Implied Exceptions. There are some cases in which exceptions to the general provisions of a statute may be implied by the courts without being subject to the criticism of having entered the legislative field. This is true where the exceptions are necessary to give effect to the legislative intent. In this connection, it has been declared that where the whole context and the circumstances surrounding the adoption of an act show a legislative intention to make an exception to the general terms of the act, the exception will be recognized by the courts. However, an exception cannot be created by construction where none is necessary to effectuate the legislative intention, and courts should be extremely cautious in reading an exception into a statute. Ordinarily, exceptions must appear plainly from the express words or necessary intendment of the statute. Where the legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and it is a general rule of construction that the courts have no authority to create, and will not create, exceptions to the provisions of a statute not made by the act itself."

In Choteau v. Burnet, 283 U. S. 691, at page 696, the United States Supreme Court stated the rule as follows:

"The intent to exclude must be definitely expressed, where, as here, the general language of the act laying the tax is broad enough to include the subject-matter. Heiner v. Colonial Trust Co., 275 U. S. 232, 48 S. Ct. 65, 72 L. Ed. 256."

More recently, in American Power and Light v. Securities and Exchange Commission and Securities and Exchange Commission v. Okin (supra), the Supreme Court in interpreting Section 24 of the Act refused to interpret an exception to the phrase "any person aggrieved".

(3) *A section cannot be construed separately from the Act in its entirety.* The construction adopted would require subsection 11 (e) to be construed as though it were a separate statute, not a mere subsection under the Act as a whole. The right of review under Section 24, by its terms, is made generally applicable to "an order issued by the Commission under this title", thus including the Act in its entirety. It is a fundamental rule of construction that the Act must be construed as a whole, and that sections are not capable of separate constructions apart from the whole. The rule is stated in 50 Amer. Jurisprudence, page 133, par. 156, as follows:

> "Sec. 156. Division into Articles, Titles, Chapters, and Sections. A statute is regarded as passed as a whole and not in parts. The distribution of the provisions of a statute into articles, titles, chapters, and sections is merely a matter of convenience in reference search and examination."

(e) The construction would permit subsection 11 (e) to nullify Section 24.

The Court below frankly labeled the contentions of the Commission, as to subsection 11 (e), a "devise". We believe the Commission has chosen this "device" for the sole purpose of circumventing the stockholder's right of review on the merits of plans of reorganization of holding companies. There are approximately sixteen major holding companies and in practically every instance the plans for reorganization have been filed under subsection 11 (e). That is the only section under which the company may file a plan. If this "devise" is successful in this instance, millions of stockholders will have their property rights altered, diminished or totally eliminated, as are the warrants in the present case, by proceedings in which they may not become parties and which they may not completely review, as intended by Congress, under Section 24.

The broad powers of review, namely, to affirm, modify or set aside the order in whole or in part, have been held not to be available to the District Court in subsection 11 (e) proceedings. (In re Laclede Gas Light Co., 57 F. Supp. 997.) In the present case it is most important that the proceedings as a whole be reviewed.

IV. The orders of the Commission sought to be reviewed are final and not interlocutory.

The Court below improperly assumed that the orders sought to be reviewed were not reviewable because, as it stated, they were "conditional in nature". The conditions to which the Court below pointed were that the orders were conditioned, (1) upon approval by a vote of the corporation's stockholders, and (2) upon approval by a District Court.

As to the contention, that the orders were conditioned upon a stockholder's vote, it should be pointed out that the approval of the plan by the orders was not conditional. The Commission approved the plan, but the plan contained a condition for approval by "a majority at a meeting". One of our contentions was that this method of approval was not in keeping with the requirements of the Certificate of Incorporation; another contention was that the plan was unfair, hence should not be submitted to the stockholders until reviewed, particularly since the stamp of approval by the Commission would necessarily affect the stockholder's decision; also the Report which the Commission required to be sent out to the stockholders, under the provisions of subsection 11 (g) (2), contained statements from the findings, which were not supported by evidence, hence were erroneous and would be misleading to the stockholders. For these reasons a review was necessary before a vote should be taken. The so-called "conditional nature" of the order in this respect therefore made a review an absolute necessity.

As to the so-called condition that the plan had to be approved by a District Court, such a contention is an obvious attempt by the Commission to set up a "devise" to circumvent a review and shift the forum to the District Court. The so-called "approval by the District Court", to which this contention refers, is nothing more than ordinary enforcement proceedings. In other words the Commission contended, and the Court below sustained the contention, that the orders were conditional upon enforcement. Every law is conditioned upon enforcement and such a contention is an insult to the intelligence. Subsection 11 (b) makes as a condition to the enforcement of any order, under that section, that it "shall be subject to judicial review as provided in Section 24", which requires a review in the Circuit Court. The Commission cannot impose a condition that it be approved in a District Court so as to nullify the condition actually imposed by Congress.

Section 24 does not except from the right of review orders which are conditional. The only orders which should not be reviewed are orders which are actually interlocutory and this is because such an order will necessarily be later reviewed if and when they become final.

In Federal Power Commission v. Metropolitan Edison Company, et al., 304 U. S. 375, which the Commission cited as authority that the orders sought to be reviewed were interlocutory, there was an attempt to stay the hearings before they were held. In that case this Court properly decided the matter was interlocutory and was not the sort which brought it within the purview of the statute, but was a mere step in procedure. In the present case the hearings have been held and terminated; the matters complained of have been excepted to and all exceptions dismissed; the Commission has issued its final order; a petition for rehearing has been denied; and there is nothing left for the Commisison to do except as to certain other matters as to which it retained jurisdiction. If a petition for review had not been taken, the plan would have been put to a vote by the stockholders and if approved, enforced.

V. The petitioners are persons aggrieved, within the intent of the Act, therefore have a right to a review, and at this time.

The motion to dismiss the petition for review conceded the "legal standing of the petitioners to challenge the plan", but questioned the jurisdiction of the Circuit Court, and implied that the petitioners might not be aggrieved, since the orders, although final, are not yet operative. To be "aggrieved", within the meaning of the Act, does not necessitate the actual taking away of one's rights, which would be done by the consummation of the plan. It is sufficient if one's rights be "threatened".

In Columbia Broadcasting System v. United States, 316 U. S. 407, Chief Justice Stone pointed out, page 417, that it is proper that an order be reviewed in its "genesis". In that matter the order merely set up a rule and regulation which had not yet been enforced against the party seeking the review. On page 425 the Chief Justice stated as follows:

> "The ultimate test of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow the results of which the regulations purport to control."

Parts of the orders, and the findings embodied in the orders, both threaten our rights and others constitute immediate injuries to our rights. The petition for review avers, and for the purposes of determining the right to review, these averments cannot be questioned, the following manners, inter alia, in which the petitioners are aggrieved by the orders:

The petitioners are aggrieved by the orders because: The orders are predicated upon proceedings not in accordance with due process; the orders are predicated upon hearings, which were not full and fair; the Commission arbitrarily refused to act upon a voluntary plan; the Commission denied the stockholders of Commonwealth the right to exercise their discretion in complying with Section 11; the Commission insisted upon Commonwealth reducing the allocation to the common stockholders, without evidence to support this demand; the Commission insisted upon a crude and wasteful form of plan resulting in small fractions; the orders require the submission to the stockholders of the plan in a manner both unfair and not in keeping with the requirements of the Certificate of Incorporation; the Commission has violated the right of equal protection of the law and the requirements of due process, by its administering the Act through special decrees; the Orders are predicated on "assumptions" of facts, which are not supported by any evidence; the Commission failed to provide due process and proper procedure by which the petitioners could defend their rights; the orders refused the petitioners the right to intervene as parties; the Commission prejudged the merits of the various plans and permitted members of its staff to negotiate, secretly and ex parte, for the withdrawing of another more favorable plan and for the amendment of that plan to give the common stockholders less; the hearings were conducted by the Examiner arbitrarily, with bias and exclusionary rulings, and characterized by haste, with a determined purpose to reach a predetermined end; the Commission arbitrarily refused to hear or see Counsel on appeal from such rulings; the orders improperly dismiss exceptions filed by the petitioners; no hearings were held upon the plan as finally amended; the orders are based upon findings not supported by substantial evidence; the orders approve a plan of recapitalization which is not fair and equitable; the orders are not authorized by the Act or, if authorized, are not within the powers of Congress. All of these

averments are to the effect that the orders immediately aggrieve the Petitioners. Although consummation of the Plan is deferred, the Petitioners are immediately aggrieved by the filing of a Report which the petitioners aver contains false, erroneous and misleading statements, and which Subsection 11 (g) (2) of the Act requires to be submitted to each stockholder in connection with any solicitation, either for or against the plan.

In addition to the immediate grievances, the Petition sets forth averments of threatened impairment of their contracts, deprivation of property rights and other violations of the Constitutional guarantees under the Bill of Rights.

VI. The court below should have stayed proceedings pending a review on the merits.

Subsection 24 (b) provides that the review shall not automatically act as a stay, but gives the Court discretion to stay proceedings. We contend a stay of proceedings pending a review was both proper and necessary.

The property rights of 175,000 stockholders of Commonwealth are in the process of being altered by a plan of reorganization, which we contend is unfair to 160,000 common stockholders and a large number of holders of option warrants. These stockholders are scattered throughout the world. Many are in the armed service. The petitioners themselves have substantial holdings, but the bill was brought also on behalf of others. Since the filing of the bill, we have been joined by numerous other stockholders whose holdings, together with petitioners, now amount to three-quarters of a million shares of common stock. Because of the sudden dismissal of the petition for review, it would have been useless to have filed a petition to join them. Because the common stockholders are so numerous and scattered, it is almost impossible to unite them for their defense and the cost of such an undertaking would be out of proportion to the holdings of any group of stockholders.

The only notice these stockholders have received has been the original hearings on May 8, 1943. The only information they have about the matter is the little which has been stated in the Company's annual reports and that which has been given out from time to time by releases to the press, most of which reports have given a distorted picture of the proceedings.

The stockholders are to be called upon to approve a plan and as their basis for approval are to have the Report of the Commission, which we contend bears no relation to the evidence, and the ultimate conclusion of the Commission that the Plan is "fair and equitable", when in fact it is not. If a vote be held under such circumstances before a review, the damage would be accomplished. The Commission knows this, and, for reasons which the petitioners cannot comprehend, are going to great lengths to circumvent a review on the merits and hasten enforcement of the plan before such a review can be had. Certainly the Government has no legitimate interest in hastily enforcing any particular plan for dividing property rights between preferred and common stockholders. If the Commission succeeds in its apparent purpose, a review thereafter will be an "idle ceremony", hence, a stay of proceedings pending a review on the merits is a necessity.

In Scripps-Howard Radio v. Federal Communication Commission, 316 U. S. 4, this Court stated, pages 9-10:

> "No court can make time stand still. The circumstances surrounding a controversy may change irrevocably during the pendency of an appeal, despite anything a court can do. But within these limits it is reasonable that an appellate court should be able to prevent irreparable injury to the parties or to the public resulting from the premature enforcement of a determination which may later be found to have been wrong. It has always been held, therefore, that, as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment

pending the outcome of an appeal. In re Claasen, 140 U. S. 200, 11 S. Ct. 735, 35 L. Ed. 409; In re McKenzie, 180 U. S. 536, 21 S. Ct. 468, 45 L. Ed. 657.

* * * * * *

If the administrative agency has committed errors of law for the correction of which the legislature has provided appropriate resort to the courts, such judicial review would be an idle ceremony if the situation were irreparably changed before the correction could be made."

Conclusion.

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

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